

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS SANCHEZ-DIAZ,

Defendant.

CRIMINAL 99-255 (JAG)

URGENT MOTION REQUESTING EXTENSION OF TIME
TO FILE NOTICE OF APPEAL

TO THE HONORABLE JAY A. GARCIA GREGORY
UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF PUERTO RICO

COMES NOW *Luis Sanchez-Diaz*, the defendant herein, represented by the Federal Public Defender for the District of Puerto Rico through the undersigned attorney, and very respectfully states, alleges and prays as follows:

1. On July 24, 2008 this Honorable Court issued an order denying defendants pro-se motion requesting reduction of sentence, based on the "2007 crack amendments" (Docket No. 242) Although the order was not formally notified to the FPD, the undersigned attorney learned about the issued order on August 4, 2008.

2. The defendant is currently detained at FCI Coleman Federal Correctional Institution.

3. The undersigned counsel informed the Defendant on August 5, 2008, through regular mail and facsimile, the Courts ruling providing him with a copy of such order and

explaining the reasons why such amendment did not apply to his case.

4. The undersigned attorney was not able to contact the defendant in order to obtain his decision whether he wanted to appeal the Courts determination or not.

5. On August 19, 2008 the undersigned attorney received a response letter from Mr. Sanchez, dated August 12, 2008. In said letter, Mr. Sanchez expressed his desire to appeal Courts' ruling and furthermore, he stated that he had just received the letter sent by the undersigned attorney, reason by which he was not able to inform his desire to appeal on a promptly matter.

6. The 10-day period to file the notice of appeal expired on August 8, 2008. In light of all the before mentioned, coupled with the fact that the Defendant is currently detained outside the District of Puerto Rico, it has been very difficult to contact him regarding his right to appeal such order, and no timely notice of appeal had been filed.

7. This honorable Court has authority to extend the time to file a notice of appeal upon a finding of good cause or excusable neglect. See Fed. R. App. P. 4(b)(4). Said rule specifically provides:

Upon a finding of excusable neglect or good cause, the district court may -- before or after the time has expired, with or without motion and notice -- extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).Fed. R. App. P. 4(b)(4).

8. In the present case, the undersigned attorney prays that the Court finds excusable neglect or good cause and extends the time to file a notice of appeal.

9. We ask the Court to take in consideration the inherent problems of communication between attorney and client that are not in the same jurisdiction. Additionally, the relief requested herein is warranted insofar as the defendant should not

be penalized and deprived of his right to appeal because of the attorney's difficulty of contacting him. Finally, the defendant would be entitled to the same relief (opportunity to file a notice of appeal) through a section 2255 motion alleging ineffective assistance of counsel. The undersigned would have to admit ineffective assistance under the circumstances of this case.

10. Accordingly, it is respectfully submitted that there is good cause and excusable neglect in the present case. The undersigned humbly prays that an extension of time to file the notice of appeal be granted.

WHEREFORE, it is respectfully requested that this Honorable Court take notice of the present motion and that the same be granted.

I HEREBY CERTIFY that on this date electronically I filed the present motion using the CM/ECF system which will in turn send notification of said motion to all parties of record.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 21st day of August, 2008.

JOSEPH C. LAWS, JR.
Federal Public Defender
District of Puerto Rico

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